

**Introduced by Senator Sher**

February 21, 2003

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An act to amend Sections 5650, 13261, and 12011 of the Fish and Game Code, and to amend Sections 13265 and 13269 of the Water Code, relating to water, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 923, as amended, Sher. Water quality.

(1) Existing law makes it a crime for a person to deposit in, permit to pass into, or place where it can pass into the waters of this state any of specified substances, including any petroleum, acid, coal or oil tar, lampblack, aniline, asphalt, bitumen, or residuary product of petroleum, or carbonaceous material or substance. Existing law excepts from the application of that prohibition a discharge or release that is expressly authorized pursuant to and in compliance with the terms of a waste discharge requirement or a waiver, or that is expressly authorized pursuant to and in compliance with the terms and conditions of a federal permit for which the State Water Resources Control Board or a regional water quality control board has, after a public hearing, issued a water quality certification.

This bill would delete *a discharge or release that is expressly authorized pursuant to a waiver from* that exception. By expanding the scope of a crime, this bill would impose a state-mandated local program.

(2) Existing law continuously appropriates the money in the Fish and Game Preservation Fund to the Department of Fish and Game to pay expenses incurred in carrying out the Fish and Game Code.

By imposing new duties on the department, this bill would make an appropriation.

(3) The Porter-Cologne Water Quality Control Act provides that any person *failing to furnish a report or pay a fee, or* discharging waste in violation of certain waste discharge requirements, after that person has been *requested to furnish a report or pay a fee or* notified in writing by a California regional water quality control board about that violation, is guilty of a misdemeanor.

This bill would delete the *request and notification*—~~requirement requirements~~. By expanding the scope of a crime, this bill would impose a state-mandated local program.

(4) The act provides that a regional board may waive certain waste discharge requirements for specific discharges or specific types of discharges if the waiver is not against the public interest. The act provides that the waivers are subject to conditions.

This bill, instead, would provide that the state board or a regional board may waive those waste discharge requirements if certain requirements are met. The bill would require the conditions of the waivers to include the payment of an annual fee and the performance of monitoring duties.

(5) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: yes. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 5650 of the Fish and Game Code is  
2 amended to read:

3 ~~5650.—(a) It is~~

4 *5650. (a) Except as provided in subdivision (b), it is unlawful*  
5 *to deposit in, permit to pass into, or place where it can pass into the*  
6 *waters of this state any of the following:*

7 (1) Any petroleum, acid, coal or oil tar, lampblack, aniline,  
8 asphalt, bitumen, or residuary product of petroleum, or  
9 carbonaceous material or substance.



(2) Any refuse, liquid or solid, from any refinery, gas house, tannery, distillery, chemical works, mill, or factory of any kind.

(3) Any sawdust, shavings, slabs, or edgings.

(4) Any factory refuse, lime, or slag.

(5) Any cocculus indicus.

(6) Any substance or material deleterious to fish, plant life, or bird life.

*(b) This section does not apply to a discharge or a release that is expressly authorized pursuant to, and in compliance with the terms and conditions of, either of the following:*

*(1) A waste discharge requirement prescribed pursuant to Section 13263 of the Water Code by the State Water Resources Control Board or a regional water quality control board after a public hearing.*

*(2) A federal permit for which the State Water Resources Control Board or a regional water quality control board has issued, after a public hearing, a water quality certification pursuant to Section 13160 of the Water Code.*

*This section does not confer additional authority on the State Water Resources Control Board, a regional water quality control board, or any other entity.*

*(c) It shall be an affirmative defense to a violation of this section if the defendant proves, by a preponderance of the evidence, all of the following:*

*(1) The defendant complied with all applicable state and federal laws and regulations requiring that the discharge or release be reported to a government agency.*

*(2) The substance or material did not enter the waters of the state or a storm drain that discharges into the waters of the state.*

*(3) The defendant took reasonable and appropriate measures to effectively mitigate the discharge or release in a timely manner.*

~~*(e)*~~

*(d) The affirmative defense in subdivision ~~(b)~~ (c) does not apply and may not be raised in an action for civil penalties or injunctive relief pursuant to Section 5650.1.*

~~*(d)*~~

*(e) The affirmative defense in subdivision ~~(b)~~ (c) does not apply and may not be raised by any defendant who has on two prior occasions in the preceding five years, in any combination within the same county in which the case is prosecuted, either pleaded*

1 nolo contendere, been convicted of a violation of this section, or  
2 suffered a judgment for a violation of this section or Section  
3 5650.1. This subdivision shall apply only to cases filed on or after  
4 January 1, 1997.

5 ~~(e)~~

6 (f) The affirmative defense in subdivision ~~(b)~~ (c) does not apply  
7 and may not be raised by the defendant in any case in which a  
8 district attorney, city attorney, or Attorney General alleges, and the  
9 court finds, that the defendant acted willfully.

10 SEC. 2. Section 12011 of the Fish and Game Code is amended  
11 to read:

12 12011. (a) In addition to the penalty provided in paragraph  
13 (4) of subdivision (b) of Section 12002, any person convicted of  
14 a violation of subdivision (a) of Section 5650 is subject to an  
15 additional fine of all of the following:

16 (1) Not more than ten dollars (\$10) for each gallon or pound of  
17 material discharged. The amount of the fine shall be reduced for  
18 every gallon or pound of the illegally discharged material that is  
19 recovered and properly disposed of by the responsible party.

20 (2) An amount equal to the reasonable costs incurred by the  
21 state or local agency for cleanup and abatement and to fully  
22 mitigate all actual damages to fish, plant, bird, or animal life and  
23 habitat.

24 (3) Where the state or local agency is required to undertake  
25 cleanup or remedial action because the responsible person refuses  
26 or is unable to fully cleanup the discharge, an amount equal to the  
27 reasonable costs incurred by the state or local agency, in addition  
28 to the amount of funds, if any, expended by the responsible person,  
29 in cleaning up the illegally discharged material or abating its  
30 effects, or both cleaning up and abating those effects.

31 (b) Notwithstanding the jurisdiction of the department over  
32 illegal discharges and pollution as provided in Section 5650, the  
33 fines specified in this section do not apply to discharges in  
34 compliance with a national pollution discharge elimination system  
35 permit or a state or regional board waste discharge permit.

36 SEC. 3. *Section 13261 of the Water Code is amended to read:*

37 13261. (a) Any person failing to furnish a report or pay a fee  
38 under Section 13260 ~~when so requested by a regional board~~ is  
39 guilty of a misdemeanor and may be liable civilly in accordance  
40 with subdivision (b).

(b) (1) Civil liability may be administratively imposed by a regional board or the state board in accordance with Article 2.5 (commencing with Section 13323) of Chapter 5 for a violation of subdivision (a) in an amount that may not exceed one thousand dollars (\$1,000) for each day in which the violation occurs. For purposes of this section only, the state board shall have the same authority and shall follow the same procedures as set forth in Article 2.5 (commencing with Section 13323) of Chapter 5, except that the executive director shall issue the complaint with review by the state board. Civil liability may not be imposed by the regional board pursuant to this section if the state board has imposed liability against the same person for the same violation.

(2) Civil liability may be imposed by the superior court in accordance with Article 5 (commencing with Section 13350) and Article 6 (commencing with Section 13360) of Chapter 5 for a violation of subdivision (a) in an amount that may not exceed five thousand dollars (\$5,000) for each day the violation occurs.

(c) Any person discharging or proposing to discharge hazardous waste, as defined in Section 25117 of the Health and Safety Code, who knowingly furnishes a false report under Section 13260, or who either willfully fails to furnish a report or willfully withholds material information under Section 13260 despite actual knowledge of that requirement, may be liable in accordance with subdivision (d) and is guilty of a misdemeanor. This subdivision does not apply to any waste discharge that is subject to Chapter 5.5 (commencing with Section 13370).

(d) (1) Civil liability may be administratively imposed by a regional board in accordance with Article 2.5 (commencing with Section 13323) of Chapter 5 for a violation of subdivision (c) in an amount that may not exceed five thousand dollars (\$5,000) for each day the violation occurs.

(2) Civil liability may be imposed by the superior court in accordance with Article 5 (commencing with Section 13350) and Article 6 (commencing with Section 13360) of Chapter 5 for a violation of subdivision (c) in an amount that may not exceed twenty-five thousand dollars (\$25,000).

*SEC. 4.* Section 13265 of the Water Code is amended to read:

13265. (a) Any person discharging waste in violation of Section 13264 is guilty of a misdemeanor and may be liable civilly

1 in accordance with subdivision (b). Each day of such discharge  
2 shall constitute a separate offense.

3 (b) (1) Civil liability may be administratively imposed by a  
4 regional board in accordance with Article 2.5 (commencing with  
5 Section 13323) of Chapter 5 for a violation of subdivision (a) in  
6 an amount which shall not exceed one thousand dollars (\$1,000)  
7 for each day in which the violation occurs.

8 (2) Civil liability may be imposed by the superior court in  
9 accordance with Article 5 (commencing with Section 13350) and  
10 Article 6 (commencing with Section 13360) of Chapter 5 for a  
11 violation of subdivision (a) in an amount which shall not exceed  
12 five thousand dollars (\$5,000) for each day in which the violation  
13 occurs.

14 (c) (1) Any person discharging hazardous waste, as defined in  
15 Section 25117 of the Health and Safety Code, in violation of  
16 Section 13264 is guilty of a misdemeanor and may be liable civilly  
17 in accordance with subdivision (d). That liability shall not be  
18 imposed if the discharger is not negligent and immediately files a  
19 report of the discharge with the board, or if the regional board  
20 determines that the violation of Section 13264 was insubstantial.

21 (2) This subdivision does not apply to any waste discharge that  
22 is subject to Chapter 5.5 (commencing with Section 13370).

23 (d) (1) Civil liability may be administratively imposed by a  
24 regional board in accordance with Article 2.5 (commencing with  
25 Section 13323) of Chapter 5 for a violation of subdivision (c) in  
26 an amount which shall not exceed five thousand dollars (\$5,000)  
27 for each day in which the violation occurs.

28 (2) Civil liability may be imposed by the superior court in  
29 accordance with Article 5 (commencing with Section 13350) and  
30 Article 6 (commencing with Section 13360) of Chapter 5 for a  
31 violation of subdivision (c) in an amount which shall not exceed  
32 twenty-five thousand dollars (\$25,000) for each day in which the  
33 violation occurs.

34 ~~SEC. 4.—~~

35 *SEC. 5.* Section 13269 of the Water Code is amended to read:

36 13269. (a) (1) On and after January 1, 2000, the provisions  
37 of subdivisions (a) and (c) of Section 13260, subdivision (a) of  
38 Section 13263, or subdivision (a) of Section 13264 may be waived  
39 by the state board or a regional board as to a specific discharge or  
40 a specific type of discharge if the state board or a regional board

1 determines that the discharge or type of discharge meets all of the  
2 following requirements:

3 (A) Is consistent with any applicable state or regional water  
4 quality control plan.

5 (B) Will not cause or contribute to a violation of any applicable  
6 water quality objective.

7 (C) Does not include any priority toxic pollutant identified  
8 pursuant to Section 307 of the Clean Water Act (33 U.S.C. Sec.  
9 1317).

10 (D) Does not include any chemical listed pursuant to Section  
11 25249.8 of the Health and Safety Code.

12 (E) Does not include any pollutant for which a total maximum  
13 daily load has been prepared or is required to be established  
14 pursuant to subsection (d) of Section 303 of the Clean Water Act  
15 (33 U.S.C. Sec. 1313(d)) *for the water body at issue.*

16 (2) Waivers for specific types of discharges may not exceed  
17 five years in duration, but may be renewed by the state board or a  
18 regional board. The waiver shall be conditional and may be  
19 terminated at any time by the state board or a regional board.  
20 *Within 90 days of receiving notice by any interested person or*  
21 *organization demonstrating that a discharge or type of discharge*  
22 *for which a waiver has been issued no longer meets one or more*  
23 *of the requirements of paragraph (1), the state board or regional*  
24 *board shall review that notice and terminate the waiver for that*  
25 *discharge or type of discharge if the weight of the evidence*  
26 *demonstrates that the discharge or type of discharge is not meeting*  
27 *all of those requirements.* The conditions of the waiver shall  
28 include, but are not limited to, both of the following:

29 (A) The payment of an annual fee established by the  
30 appropriate regional board to cover the cost of administering the  
31 waiver.

32 (B) The performance of monitoring on a quarterly basis for at  
33 least one year to verify the constituents of the discharge and the  
34 adequacy of the waiver's conditions, and, thereafter, the  
35 performance of *that* monitoring at least once every two years.

36 (b) (1) A waiver in effect on January 1, 2000, shall remain  
37 valid until January 1, 2003, unless the regional board terminates  
38 that waiver prior to that date. All waivers that were valid on  
39 January 1, 2000, and granted an extension until January 1, 2003,



1 and not otherwise terminated, may be renewed by a regional board  
2 in five-year increments.

3 (2) Notwithstanding paragraph (1), a waiver for an onsite  
4 sewage treatment system that is in effect on January 1, 2002, shall  
5 remain valid until June 30, 2004, unless the regional board  
6 terminates the waiver prior to that date. Any waiver for onsite  
7 sewage treatment systems adopted or renewed after June 30, 2004,  
8 shall be consistent with the applicable regulations or standards for  
9 onsite sewage treatment systems adopted or retained in accordance  
10 with Section 13291.

11 (c) Upon notification of the appropriate regional board of the  
12 discharge or proposed discharge, except as provided in subdivision  
13 (d), the provisions of subdivisions (a) and (c) of Section 13260,  
14 subdivision (a) of Section 13263, and subdivision (a) of Section  
15 13264 do not apply to a discharge resulting from any of the  
16 following emergency activities:

17 (1) Immediate emergency work necessary to protect life or  
18 property or immediate emergency repairs to public service  
19 facilities necessary to maintain service as a result of a disaster in  
20 a disaster-stricken area in which a state of emergency has been  
21 proclaimed by the Governor pursuant to Chapter 7 (commencing  
22 with Section 8550) of Division 1 of Title 2 of the Government  
23 Code.

24 (2) Emergency projects undertaken, carried out, or approved  
25 by a public agency to maintain, repair, or restore an existing  
26 highway, as defined in Section 360 of the Vehicle Code, except for  
27 a highway designated as an official state scenic highway pursuant  
28 to Section 262 of the Streets and Highways Code, within the  
29 existing right-of-way of the highway, damaged as a result of fire,  
30 flood, storm, earthquake, land subsidence, gradual earth  
31 movement, or landslide within one year of the damage. This  
32 paragraph does not exempt from this section any project  
33 undertaken, carried out, or approved by a public agency to expand  
34 or widen a highway damaged by fire, flood, storm, earthquake,  
35 land subsidence, gradual earth movement, or landslide.

36 (d) Subdivision (c) is not a limitation of the authority of a  
37 regional board under subdivision (a) to determine that any  
38 provision of this division shall not be waived or to establish  
39 conditions of a waiver. Subdivision (c) shall not apply to the extent





1 that it is inconsistent with any waiver or other order or prohibition  
2 issued under this division.

3 (e) The regional boards and the state board shall require  
4 compliance with the conditions pursuant to which waivers are  
5 granted under this section.

6 (f) Prior to renewing any waiver for a specific type of discharge  
7 established under this section, the state board or a regional board  
8 shall review the terms of the waiver policy at a public hearing. At  
9 the hearing, the state board or a regional board shall determine  
10 whether the discharge for which the waiver policy was established  
11 should be subject to general or individual waste discharge  
12 requirements.

13 ~~SEC. 5.~~—

14 *SEC. 6.* No reimbursement is required by this act pursuant to  
15 Section 6 of Article XIII B of the California Constitution because  
16 the only costs that may be incurred by a local agency or school  
17 district will be incurred because this act creates a new crime or  
18 infraction, eliminates a crime or infraction, or changes the penalty  
19 for a crime or infraction, within the meaning of Section 17556 of  
20 the Government Code, or changes the definition of a crime within  
21 the meaning of Section 6 of Article XIII B of the California  
22 Constitution.

